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SINCE 1855

October 9, 2000

Ellen Seidman
Director
Office of Thrift Supervision
1700 G Street N.W.
Washington, D.C. 20052

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ATTN: Manager, Dissemination Branch
Information and Management Services Division

*Re. Notice of Proposed Rulemaking – Mutual Savings Institutions,
RIN 1550-AB24*

Dear Director Seidman:

Dollar Bank very much appreciates the opportunity to comment in response to the Notice of Proposed Rulemaking regarding mutual savings associations and mutual holding companies. A mutual institution since 1855, Dollar shares the OTS' view that mutual savings associations ("mutuals") "form the heart of the thrift industry." Mutuals are indeed rooted in their home communities and by their very nature are solely focused on serving them. Dollar thus applauds the stated purpose of this rulemaking, "to better enable institutions that wish to remain mutuals to do so."

Dollar is a well-capitalized federal savings bank serving the Pittsburgh and Cleveland metropolitan areas. Having assets in excess of \$3 billion, the Bank provides a comprehensive line of banking products and services to local households and businesses in both markets. It has a public CRA rating of Outstanding.

This rulemaking is important because banking is essentially a business of trust. We share a trust with our customers, and we believe that mutuality is the form best suited to preserving that trust over the long term. Dollar's customers know that we know them, their neighborhoods, and their needs – and will continue to serve them into the future. As long as we are in mutual form, we will not be acquired by a distant company that must answer to shareholders scattered across the country, or even the globe. An essential

corollary should be a regulatory framework based on an understanding and commitment to the mutual form of operation. We stand ready to work with the OTS in every way possible to promote rules and policies that fairly provide for the long-term strength of independent, community-oriented mutual savings associations.

OTS has announced that it is developing a comprehensive regulatory strategy for mutual associations and mutual holding companies that will allow them to be fully competitive in today's marketplace and allow them to flourish in their present organizational form. It further seeks to provide a regulatory and supervisory structure supportive of mutuals and designed to ensure that a decision to convert to stock form is based upon a sound business plan, not the vagaries of the stock market, the selfish interests of insiders or advisers, or the unintentional tilt of the regulatory framework against mutuality. OTS has specifically requested comment on a series of questions related to the long-term maintenance and potential enhancement of the mutual form. These topics are addressed below.

Long-term Commitment to Mutuality

The proposal includes a number of changes intended to facilitate continued mutual status and to ensure that the decision-making leading up to a conversion to stock form has a strong business rationale and the support of two thirds of the institution's board of directors. For example, it proposes to require that the business plan necessary to support a conversion be approved by a two-thirds vote of the board. Dollar supports such changes.

We suggest that the OTS consider an additional option: allowing a supermajority of an association's board (at least three-fourths) to adopt a set of approved charter amendments that would: (1) require a similar supermajority in the future to approve a plan of conversion to stock form,¹ (2) require that such supermajority provisions be included in the corporate governance provisions for any mutual holding company subsequently established by that association, and (3) limit the total amount of stock that management and directors might receive in a conversion approved by the requisite supermajority to a level that would effectively minimize the possibility that insider self-interest would, however subtly, influence a stock conversion decision. For example, the maximum insider participation for all insiders and related interests might be set at no more than 2% of the total number of shares in the aggregate and no more than 0.05% for any individual insider (and related interests). We believe these suggested allocations to represent a far smaller proportion than usually allocated to insiders in a typical

¹ An exception for supervisory conversions would of course be made.

conversion. If, however, in OTS' judgment lower maximum limits would better achieve this important objective, we would support such a determination as well.

Although we would advocate the inclusion of such provisions in all mutual charters, at a minimum we urge the OTS to provide mutuals with the option of a pre-approved set of charter amendments that would allow any existing or newly established mutual to elevate its form to "constitutional" status. With Dollar's almost 150 years' experience as a mutual, through many business cycles, depressions, and financial crises, in our judgment there can be no question of the enduring capacity of mutuals. The present initiative reflects OTS' commitment to this goal. This charter option goes one step further than the changes in the conversion rules set forth in this OTS release. Given the premises of this proposal, we submit that charter amendments like those suggested above are a logical – indeed in our judgment necessary – corollary so that institutions committed to mutuality can implement their commitment for the long term.

Mutual Affiliations

The Proposal asks whether "mutual institutions [should] be permitted to affiliate with other mutual institutions to leverage managerial and administrative resources while simultaneously retaining their independent community focus using means other than conversion to stock form or reorganization into MHC form? OTS requests comments on this issue in response to inquiries from mutuals for ways to affiliate with each other that do not involve the issuance of stock."

Dollar strongly supports the pursuit of these avenues by OTS. While the OTS inquiry seems to be directed at relationships between mutual thrifts, we would urge OTS to broaden its consideration to include affiliate structures for all types of non-stock business organizations. We further suggest that the range of activities that might be reached by such "mutual affiliations" include all "financial" activities as defined in the Gramm-Leach-Bliley Act. We note for example that many insurance companies are organized in mutual form.

In our judgment, close, long-term, coordinate, affiliate-like relationships between mutuals are consistent with both the community service mission of mutuals and the maintenance of essential corporate separation and independence. Such relationships may raise issues of "controlling influence" under existing control rules, and we urge OTS to rethink such issues to allow "mutual affiliations."

We further believe that the complete range of beneficial relationships involving mutual entities should be fully explored by mutual institutions and the OTS. We recognize novel issues are likely to be raised. Mutuals can, and should, be able to work together and pool their human, operational, and other resources to draw on each's strengths. They should have the capacity to contribute their own strengths and expertise to joint development of diverse financial product and service offerings that could be

made available to their existing and potential customers. Dollar would welcome the opportunity to work with OTS staff on standards to guide relationships that would allow diversification and expansion within a mutual corporate structure.

Supervision and examination.

The OTS release states that as part of a comprehensive strategy addressing needs and concerns of mutuals, it is developing new analytical techniques, exam procedures and industry guidance addressing reasons why mutuals convert to stock. Among the elements of this strategy are:

- *Alternative capital-raising techniques.* OTS suggested the possible alternatives might include subordinated debt, mutual capital certificates, nonwithdrawable accounts, and trust preferred securities. Dollar is supportive of any appropriate OTS flexibility with respect to capital raising techniques because mutuals are disadvantaged as compared to public companies in this regard.
- *Mutual compensation plans.* New OTS guidance is to be issued with respect to compensation of management and staff so that mutual compensation plans will be treated comparably to plans of stock institutions. We support this constructive initiative.
- *Enhanced analytical tools.* These tools are intended to improve supervision so that examiners can "more effectively gauge the overall financial condition and the ability of mutual institutions to sustain long-term economic viability throughout economic cycles." We would observe that because mutuals are not subjected to dividend pressures from shareholders, the quality of their earnings, in our judgment, is generally superior. Compared to shareholder-controlled entities, a mutual's net earnings are retained within its capital account, and thus provide mutuals greater flexibility to add to reserves when it is appropriate to do so.

Acting as a "Finder"

Expanding potential fee income opportunities provides a diversification of revenue sources that can add to financial strength. Although not specifically mentioned by OTS in this proposal, and not limited to mutuals, we urge OTS to provide express regulatory authority for associations to act as a "finder." National banks for many years have had authority under OCC regulations to bring parties together as a "finder" and to earn fees

for such services, without involving the bank in the transaction subsequently entered into by the parties so brought together.²

We note that the OTS staff recently determined that it is within the incidental powers of a federal association to receive referrals fees for introducing their small business customers to third party providers of investment advisory services. See Opinions of the Office of Chief Counsel, OTS, #P-2000-7 (May 5, 2000). That opinion likens this activity to the finders activities of national banks. As an extension of this position, we suggest that regulatory recognition of this capacity would allow associations, including mutuals, to enhance the services provided to customers and to earn fee income in a prudent, low-risk manner.

Mutual Holding Company Amendments

Although Dollar believes that operation as a mutual bank is far preferable, it has long supported the development of a flexible and viable mutual holding company option. The amendment made by Section 401(b) of Gramm-Leach-Bliley is Congressional recognition of the need for MHCs to be fully competitive with all other financial service organizations. We concur with the expressed preference of the OTS that mutuals that determine a need to issue stock reorganize into a MHC structure rather than become a stock institution. We urge OTS to consider the inclusion of further safeguards for mutuality in the MHC structure so that it does not become just a way-station to a stock conversion (with the attendant expansion of opportunities for consultants and lawyers to earn additional fees).

² See 12 C.F.R. § 7102:

(a) *General.* A national bank may act as a finder in bringing together a buyer and seller.

(b) *Qualification.* Acting as a finder includes, without limitation identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law.

(c) *Advertisement and fee.* Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

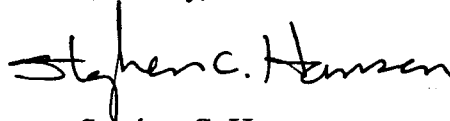
Mutual-to-Stock Conversions

It is no secret that many stock conversions have been impelled by the selfish interests of insiders and the bevy of lawyers and consultants who earn handsome fees by helping to bring institutions public. As the OTS release makes plain, past conversions have frequently lacked a business rationale related to the business operations of the institution or its customers' needs sufficient to justify the conversion. The business plan requirement, and the related approval process, address past practices and abuses in an appropriate fashion. Conversions to stock should be safe and sound, subject to appropriate legal safeguards and procedures, *and rare*.

Dollar supports this important regulatory initiative by OTS. If you have any questions, please do not hesitate to contact me personally.

Thank you very much.

Sincerely,

A handwritten signature in black ink that reads "Stephen C. Hansen". The signature is written in a cursive, slightly stylized font.

Stephen C. Hansen
President & CEO

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